

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

TUCKER LEWIS,
Charging Party/Appellant,

HRB CASE NO.02200376

-v-

FINAL AGENCY DECISION

USA DeBUSK,
Respondent/Appellee.

Charging Party, Tucker Lewis, filed a complaint with the Department of Labor & Industry (Department), which alleged unlawful discrimination in employment on the basis of disability. Following an informal investigation, the Department determined that reasonable cause supported Lewis's allegations. The case went before the Office of Administrative Hearings (OAH) of the Department of Labor & Industry, which held a contested case hearing, pursuant to Mont. Code Ann. § 49-2-505. The hearing officer issued a Decision on May 9, 2022. The hearing officer entered judgment in favor of USA DeBusk and determined that discrimination did not occur.

Charging Party filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on January 19, 2023. Eric E. Holm, attorney, appeared and presented oral argument on behalf of Lewis. Jeffrey A. Weldon, attorney, appeared and presented oral argument on behalf of USA DeBusk.

STANDARD OF REVIEW

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of

law. Mont. Code Ann. § 2-4-621(3). The commission reviews conclusions of law for correctness and to determine whether the hearing officer misapplied the law to the facts of the case. The commission reviews findings of fact to determine whether substantial evidence exists to support the particular finding. Admin. R. Mont. 24.9.123(4)(b); *Schmidt v. Cook*, 2005 MT 53, ¶ 31, 326 Mont. 202, 108 P.3d 511. “Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. It consists of more than a mere scintilla of evidence but may be less than a preponderance.” *State Pers. Div. v. DPHHS*, 2002 MT 46, ¶ 19, 308 Mont. 365, 43 P.3d 305.

DISCUSSION

Before the Commission, Mr. Lewis argues the hearing officer relied on an outdated standard in reviewing Mr. Lewis’s claim, using case law from the 1990s to determine Mr. Lewis was not disabled. Further, charging party argues the hearing officer erred in determining that driving was not an essential function of Mr. Lewis’s job.

Before the Commission, USA DeBusk argues the hearing officer did not err. While agreeing the hearing officer used a standard from the 1990s, USA DeBusk argues the findings of fact are supported by competent, substantial evidence, the conclusions of law are correct, and the claim fails when applying the correct standard.

After careful consideration of the complete record and the argument presented by the parties, the Commission determines the hearing officer’s findings of fact are based on competent substantial evidence and adopts them as drafted.

The Commission acknowledges OAH applied an outdated standard as it applies to the analysis of Lewis’s claimed disability, but concludes it is not a reversible error and the hearing officer nonetheless reached the correct conclusion. The hearing officer determined that evidence supported the conclusion that driving was an essential function of Mr. Lewis’s job, even if not contained in the job description. *Decision, p. 15*. This conclusion was based on testimony from

multiple witnesses, including Lewis himself, who testified he spent at least ten hours per week driving. *Hearing Transcript, p. 148.* The hearing officer also found that USA DeBusk had offered Mr. Lewis unpaid leave, which was the only accommodation available when driving was an essential function. *Decision, page 16.* USA DeBusk did not have a light duty position available, and Lewis rejected the offered leave. The hearing officer's decision is supported by substantial, competent evidence and supports the hearing officer's conclusion that DeBusk did not fail to accommodate Mr. Lewis. The Commission therefore amends Conclusion of Law #3 to read:

3. Lewis failed to prove, by the preponderance of the evidence, ~~that he has a disability, was a qualified individual, or that DeBusk failed to accommodate him~~ under the MHRA.

The Commission adopts the remaining conclusions of law as correct.

ORDER

IT IS HEREBY ORDERED, that the hearing officer decision is MODIFIED. Therefore, the Commission enters this modified order as its FINAL AGENCY DECISION.

DATED this 14th day of April 2023.



Peter M. Damrow, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 14th day of April 2023.

Tucker Lewis
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Jeffrey A. Weldon
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A handwritten signature in black ink that reads "Annah Howard". The signature is written in a cursive, flowing style.

Annah Howard, Legal Secretary
Montana Human Rights Bureau